HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case

C.M.C. No. 257 / 2006
Pradeep Kumar & others
Vs
State of Uttaranchal and others

Approved for reporting.

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Not approved for reporting

Date of decision 15.11.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Case No. 257 of 2006

1. Pradeep Kumar s/o Kshetrapal
2. Kshetrapal s/o Rahtu Singh
3. Smt. Kiran w/o Kshetrapal
4. Pravesh Kumar S/o Kshetrapal
5. Brahmpal s/o Akalchand,
   All residents of village Suhagani, P.S. Nagal,
   District Saharanpur (U.P.) ..... Petitioners

Versus

1. State of Uttaranchal
2. Sanjay Kumar s/o Sri Ghyan Pal Singh
   Village Rohlki Dyalpur, P.S. Bhagwanpur,
   District Haridwar .... Respondents

Dated : 15.11.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Yogesh Sharma counsel for the petitioners, learned A.G.A. for respondent no. 1 and Sri Lokpal Singh counsel for the respondent No. 2.

By the present application under section 482 Cr.P.C., the applicants have prayed for quashing the proceedings in Case Crime No. 131 of 2005, Criminal case No. 171 of 2006, State Vs. Pradeep Kumar and others under sections 498-A, 323 I.P.C. and ¾ Dowry Prohibition Act, P.S. Bhawanpur District Haridwar pending in the court of Ist Additional Civil Judge, Roorkee, District Haridwar.

Briefly stated respondent no. 2 Sanjay Kumar has filed a complaint under section 156(3) Cr.P.C. in the Court of Ist

Additional Civil Judge (J.D.) Roorkee District Haridwar with the allegations that his sister Smt. Seema was married to Sri Pradeep Kumar on 9.2.1999. Soon after her marriage all the applicants started treating his sister with cruelty and demanded rupees fifty thousands and a motor cycle. On 9.7.2005 they ousted Smt. Seema out of the house.

On the said petition the learned Magistrate called for a report from the S.H.O. Police Station, Bhagwanpur, District Haridwar and thereafter directed to register a case under sections 498-A, 323 I.P.C. and ¾ of Dowry Prohibition Act.

The investigation officer filed charge sheet against all the applicants for the offence under section 498-A, 323 I.P.C. and ¾ of Dowry Prohibition Act. The 1st Additional Civil Judge (JD) Roorkee has taken cognisance against all the applicants vide order date 10.3.2006 and summoned the accused. Against the summoning order the present application under section 482 Cr.P.C. has been filed.

Since the applicants are being prosecuted for the offence punishable under sections 498-A, 323, I.P.C. and 3/4 of the Dowry Prohibition Act, it will be open for the petitioners to defend their case before the Court concerned. Since the disputed question of fact with regard to the offence punishable under sections 498A, 323 I.P.C. and 3/4 of the Dowry Prohibition Act, are involved, therefore, prime facie no case can is made out for interference under Section 482 Cr.P.C.

After relying upon the judgment is_***State of Haryana and others v. Ch. Bhajan Lal and others*** in ***AIR 1992 SC 604,*** in ***Union of India Vs. Prakash P. Hinduja and another 2003 SCC (Crl) 1314,*** the Apex Court has held as under :

““9. *...The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in R.P. Kapur v. State of Punjab AIR 1960 SC 866, Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi (1983) 1 SCC 1 and Raj Kapoor v. State (1980) 1 SCC 43. The matter was examined in considerable detail in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused, (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.*

10. The principal question which, therefore, requires consideration is whether the court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid."

In the light of the aforesaid judgment of the Apex court, I do not see any ground to interfere under Section 482 Cr.P.C.

However, if the female accused applicant surrenders herself, her bail application shall be considered on the same day. In case of bail application by the male applicants the same shall be considered expeditiously.

Subject to the observations made above, application under section 482 Cr.P.C. is dismissed. No order as to costs.

(Rajesh Tandon, J.)

Dated: 15.11.2006

*Dhyani